

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

UNILOC LUXEMBOURG S.A.,
Patent Owner.

Case IPR2017-01993
Patent 9,414,199 B2

Before MIRIAM L. QUINN, KERRY BEGLEY, and
CHARLES J. BOUDREAU, *Administrative Patent Judges*.

BEGLEY, *Administrative Patent Judge*.

SCHEDULING ORDER

A. DUE DATES

This order sets due dates for the parties to take action after institution of the proceeding. The parties may stipulate to different dates for DUE DATES 1 through 5 (earlier or later, but no later than DUE DATE 6). A notice of the stipulation, specifically identifying the changed due dates, must be filed promptly. The parties may not stipulate to an extension of DUE DATES 6 and 7. Moreover, any stipulation to a different DUE DATE 4 does not modify the deadline, set in this Order, for requesting an oral argument.

In stipulating to different times, the parties should consider the effect of the stipulation on times to object to evidence (37 C.F.R. § 42.64(b)(1)), to supplement evidence (37 C.F.R. § 42.64(b)(2)), to conduct cross-examination (37 C.F.R. § 42.53(d)(2)), and to draft papers depending on the evidence and cross-examination testimony (*see* section C below).

The parties are reminded that the Testimony Guidelines appended to the Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,772 (Aug. 14, 2012) (Appendix D) apply to this proceeding. The Board may impose an appropriate sanction for failure to adhere to the Testimony Guidelines. 37 C.F.R. § 42.12. For example, reasonable expenses and attorneys' fees incurred by any party may be levied on a person who impedes, delays, or frustrates the fair examination of a witness.

1. INITIAL CONFERENCE CALL

The parties are directed to contact the Board within a month of this Order if there is a need to discuss proposed changes to the dates set in this Order or proposed motions. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,765–66 (Aug. 14, 2012) (guidance in preparing for an initial

conference call). To request a conference call, the requesting party should submit a list of dates and times when the parties are available for a call.

2. ADR STATEMENT

The parties are encouraged to discuss promptly alternative means for resolving their disputes regarding the subject matter of this proceeding. To advance the opportunities for early disposition, the petitioner is encouraged to notify the Board, by the due date identified in the Appendix to this Order, that the parties have conferred regarding alternative dispute resolution and whether the parties have reached any agreements.

3. DUE DATE 1

The patent owner may file—

- a. A response to the petition (37 C.F.R. § 42.120), and
- b. A motion to amend the patent (37 C.F.R. § 42.121).

The patent owner must file any such response or motion to amend by DUE DATE 1. If the patent owner elects not to file anything, the patent owner must arrange a conference call with the parties and the Board. The patent owner is cautioned that any arguments for patentability not raised in the response will be deemed waived.

4. DUE DATE 2

The petitioner must file any reply to the patent owner's response and opposition to the motion to amend by DUE DATE 2.

5. DUE DATE 3

The patent owner must file any reply to the petitioner's opposition to patent owner's motion to amend by DUE DATE 3.¹

6. DUE DATE 4

a. Each party must file any motion for an observation on the cross-examination testimony of a reply witness (*see* section D below) by DUE DATE 4.

b. Each party must file any motion to exclude evidence (37 C.F.R. § 42.64(c)) and any request for oral argument (37 C.F.R. § 42.70(a)) by DUE DATE 4.

7. DUE DATE 5

a. Each party must file any response to an observation on cross-examination testimony by DUE DATE 5.

b. Each party must file any opposition to a motion to exclude evidence by DUE DATE 5.

8. DUE DATE 6

Each party must file any reply for a motion to exclude evidence by DUE DATE 6.

9. DUE DATE 7

The oral argument (if requested by either party) is set for DUE DATE 7.

The parties are advised that the panel may schedule oral argument, if requested, at the U.S. Patent and Trademark Office headquarters in Alexandria, VA; the Texas Regional Office in Dallas, TX; or the Silicon

¹ The parties are advised that if no motion to amend is filed in this proceeding, Due Date 3 is moot, and the panel may advance Due Dates 4–7 *sua sponte*.

Valley Regional Office in San Jose, CA. The panel will issue an order regarding the location of the oral argument in advance of the argument date.

B. DISPUTE RESOLUTION DURING TRIAL

The panel encourages the parties to resolve disputes arising during the trial on their own. To the extent that a dispute arises between the parties, we order the parties to meet and confer to resolve their dispute before contacting the Board. If attempts to resolve the dispute fail, a party may request a conference call with the Board and the other party in order to seek authorization to move for relief.

In any request for a conference call with the Board to resolve a dispute, the requesting party shall: (a) certify that it has conferred, meaningfully and in good faith, with the other party in an effort to resolve the dispute; (b) identify with specificity the issue(s) for which agreement has not been reached; (c) identify the precise relief to be sought; and (d) propose specific dates and times at which both parties are available for a conference call.

C. CROSS-EXAMINATION

Except as the parties might otherwise agree, for each due date—

1. Cross-examination begins after any supplemental evidence is due. 37 C.F.R. § 42.53(d)(2).
2. Cross-examination ends no later than a week before the filing date for any paper in which the cross-examination testimony is expected to be used. *Id.*

D. MOTION FOR OBSERVATION ON CROSS-EXAMINATION

A motion for observation on cross-examination provides the parties with a mechanism to draw the Board's attention to relevant

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